

ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS

Elections Code Section 14310

Statutes 2000, Chapter 260 (SB 414)

Voter Identification Procedures (03-TC-23)

County of San Bernardino, Claimant

EXECUTIVE SUMMARY

The Executive Summary will be included with the Final Staff Analysis.

STAFF ANALYSIS

Claimant

County of San Bernardino

Chronology

10/01/03 Claimant files test claim with the Commission
10/15/03 Commission staff issues completeness review letter
11/14/03 Department of Finance (DOF) files comments on the test claim
07/21/06 Commission staff issues the draft staff analysis

Background

This test claim addresses an amendment to Elections Code section 14310, regarding counting "provisional ballots." A provisional ballot is a regular ballot that has been sealed in a special envelope, signed by the voter, and then deposited in the ballot box. According to information from the Secretary of State's website:¹

A voter is asked to vote a provisional ballot at the polls due to one of the following reasons:

- **The voter's name is not on the official roster of voters and the election officer cannot verify the voter's voting eligibility on Election Day.** The Elections Official's Office will check the registration records. If further research determines that the voter is eligible to vote in the election, the provisional ballot will be counted.
- **A voter has moved within the county, but did not re-register to vote.** The Elections Official will verify the voter's prior registration before the provisional ballot will be counted. The voter's registration will then be updated with the voter's current address.
- **Records indicate that the voter requested an absentee ballot and the voter fails to turn in the absentee ballot at the polls on Election Day.** The Elections Official's Office will check the records, and if the voter did not vote an absentee ballot, the voter's provisional ballot will be counted.
- **The voter is a first- time Federal Election voter in the county and was unable to provide the required proof of identification.** The Elections Official's Office will verify the voter's eligibility to vote by comparing the signature on the voter's registration with the signature on the provisional ballot envelope.

¹ At < http://www.ss.ca.gov/elections/elections_provisional.htm > (as of July 5, 2006.)

Provisional ballots are counted during the official canvass² when:

Prior to the completion of the official canvass (the vote tally), the Elections Official's Office establishes, from voter registration records, the claimant's right to vote the ballot.

Statutes 2000, chapter 260, amended Elections Code section 14310, subdivision (c)(1), to add a requirement that elections officials "compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration."

Claimant's Position

Claimant, County of San Bernardino, filed this test claim on October 1, 2003.³ Claimant contends that Elections Code section 14310, as amended by Statutes 2000, chapter 260, constitutes a reimbursable state-mandated program, "by requiring the elections official to compare signatures on provisional ballot envelopes with the signatures on the voter's affidavit of registration for voter identification purposes."

Department of Finance's Position

DOF filed comments on November 14, 2003, agreeing with the claimant that Statutes 2000, chapter 260 "may have resulted in new state-mandated activities."

² Elections Code section 335.5 defines "official canvass," as follows:

The "official canvass" is the public process of processing and tallying all ballots received in an election, including, but not limited to, provisional ballots and absentee ballots not included in the semifinal official canvass. The official canvass also includes the process of reconciling ballots, attempting to prohibit duplicate voting by absentee and provisional voters, and performance of the manual tally of 1 percent of all precincts.

Elections Code section 318 provides: "'Election' means any election including a primary that is provided for under this code."

³ Potential reimbursement period for this claim begins no earlier than July 1, 2002, based on the filing date of the test claim. (Gov. Code, § 17557, subd. (c).)

Discussion

The courts have found that article XIII B, section 6, of the California Constitution⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁷ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.⁸

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁰ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹¹

⁴ Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

⁵ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

¹⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹²

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹³ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁴

Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁵ The court has held that only one of these findings is necessary.¹⁶

Staff finds that verifying provisional ballots imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. County elections officials provide a service to the members of the public by verifying that those who vote provisional ballots are eligible to cast a ballot. The test claim legislation also requires local elections officials to engage in administrative activities solely applicable to local government, thereby imposing unique requirements upon counties that do not apply generally to all residents and entities of the state.

Accordingly, staff finds that the test claim legislation constitutes a “program” and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution *if* the legislation also mandates a new program or higher level of service, and costs mandated by the state.

¹² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁴ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁵ *County of Los Angeles, supra*, 43 Cal.3d at page 56.

¹⁶ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

Issue 2: Does the test claim legislation mandate a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution?

Elections Code Section 14310:

As background, Elections Code section 14310, subdivision (a), provides:

(a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot

The test claim legislation, Statutes 2000, chapter 260, amended Elections Code section 14310, subdivision (c)(1) as follows,¹⁷ indicated in underline and strikeout:

(c)(1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

Claimant alleges that prior to this amendment: “the county elections official was not legally required to perform provisional ballot signature comparison for voter identification purposes. ... Enactment of this statute has increased the duties of the county elections official, and requires the official to provide a higher-level of service for an existing program.”

Test claim legislation mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.¹⁸ The courts have defined a “higher level of service” in conjunction with the phrase “new program” to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, “it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs.”¹⁹ A statute mandates a reimbursable “higher level of service” when the statute, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service to the public provided in the existing program.²⁰

¹⁷ Elections Code section 14310 has been subsequently amended, but the later statutes have not been included in this test claim, and this particular provision has not changed.

¹⁸ *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

¹⁹ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

²⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

Although prior law required that “the elections official shall examine the records with respect to all provisional ballots cast,” the law did not require that each signature on a provisional ballot be directly compared to the signature on the voter’s registration affidavit. This is akin to the analysis by the court in *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 173, which found a higher level of service was mandated when general law on an existing program is changed to require performance of activities in a very specific manner:

A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because their requirements go beyond constitutional and case law requirements. Where courts have *suggested* that certain steps and approaches may be helpful, the Executive Order and guidelines *require* specific actions. For example, school districts are to conduct mandatory biennial racial and ethnic surveys, develop a “reasonably feasible” plan every four years to alleviate and prevent segregation, include certain specific elements in each plan, and take mandatory steps to involve the community, including public hearings which have been advertised in a specific manner. While all these steps fit within the “reasonably feasible” description of *Jackson and Crawford*, the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts.

Staff finds that Elections Code section 14310, subdivision (c)(1), as amended by Statutes 2000, chapter 260, mandates a new program or higher level of service within an existing program by compelling county elections officials to perform the following activity when conducting the official canvass for elections:

- Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected.

Issue 3: Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose “costs mandated by the state.” Government Code section 17514 defines “costs mandated by the state” as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant estimated costs of \$1000 or more for the test claim allegations. The claimant also stated that none of the Government Code section 17556 exceptions apply. For the activity listed in the conclusion below, staff agrees and finds accordingly that it imposes costs mandated by the state upon counties within the meaning of Government Code section 17514.

CONCLUSION

Staff concludes that Elections Code section 14310, subdivision (c)(1), as amended by Statutes 2000, chapter 260, mandates a new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for performing the following specific new activity:

- Using the procedures that apply to the comparison of signatures on absentee ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare, the ballot shall be rejected. (Elec. Code, § 14310, subd. (c)(1).)²¹

Recommendation

Staff recommends that the Commission adopt this analysis and approve the test claim.

²¹ As amended by Statutes 2000, chapter 260.

Commission on State Mandates

Original List Date: 10/8/2003

Last Updated: 7/19/2006

List Print Date: 07/21/2006

Claim Number: 03-TC-23

Issue: Voter Identification Procedures

Mailing Information: Draft Staff Analysis

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